

REPORTABLE

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO.5897 OF 2013

Manjeet Singh Khera
 Petitioner

....

Versus

State of Maharashtra

....Respondent

ORDER

K.S. Radhakrishnan, J.

1. We are, in this case, concerned with the question whether the prosecution is bound to produce the original complaint/application filed by an unknown person, based on which an inquiry was initiated by the Anti Corruption Bureau.

2. The petitioner (first accused) along with three others moved an application before the Special Sessions Court of Greater

Bombay for a direction to the prosecution/Anti Corruption Bureau to produce the original complaint/application filed by an unknown person, leading the accused person to be charge-sheeted for offences under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code.

3. The petitioner submitted that on the basis of that complaint an open enquiry No.31/198 was conducted and following that Special Case No.39 of 1999 was registered against the accused person. It was brought out that one complaint/application was received by the Anti Corruption Bureau and copy of that application was forwarded to the Home Department. PW1 had deposed that he could not disclose the name of the person who had sent that complaint. It was mentioned therein that the first accused was having huge movable and immovable property at Bombay, Aurangabad and Nagpur. The first accused wanted a copy of the original complaint to be produced before the court as well as the name of the person who had sent that complaint.

4. The prosecution resisted the application preferred by the first accused contending that the prosecution would not be relying upon the complaint/application sought to be produced. On the other hand, discreet enquiry was conducted based on that application and after collecting sufficient materials, the prosecution lodged first information report and thereafter investigation was carried out. Further it was pointed out that prosecution cannot examine the person who gave the complaint/application, otherwise no person would pass on any secret information to the Anti Corruption Bureau.

5. The Special Judge, Prevention of Anti Corruption, found no basis in the application calling upon for the production of the original complaint as well as the name of the complainant, who had sent the complaint and rejected the application vide his order dated 29.01.2011, which was confirmed by the High Court on 25.02.2013, against which this special leave petition has been preferred.

6. Shri Amol Chitale, learned counsel appearing for the petitioner submitted that the petitioner is not interested in getting

the name of the person who made the complaint, but wanted to know the contents of the complaint, which cannot be said to be secret information. Learned counsel also submitted that prosecution cannot exercise privilege of non-disclosure of the information they have received, which lead to the investigation. Learned counsel placed reliance on the decision of this Court in **V.K. Sasikala v. State Represented by Superintendent of Police** (2012) 9 SCC 771 and submitted that when accused applies for inspection of documents in the custody of the court, even at the advanced stage of the trial, the court is duty bound to supply those documents and the same reasoning will apply in the case of prosecution as well.

7. Since the entire emphasis of the counsel for the petitioner is on **V.K.Sasikala case** (supra), before embarking on the discussion on the issue involved, we would first like to discuss the ratio of **V.K.Sasikala case**(supra). In that case, the appellant -accused had demanded copies/inspection of those documents which were not relied on by the prosecution but at the same time, these documents formed part of police report and were in the

custody of the Court. Demand was made after the prosecution had led the evidence and at the stage of Section 313 Cr.P.C. questioning. In this backdrop, the question that fell for determination was as to whether the accused would be entitled to the documents which were part of police report under Section 173(5) of the Code of Civil Procedure, and were in the custody of the Court. The Court explained the provisions governing the process of investigation of a criminal charge, the duties of the investigating agency and the role of the courts after the process of investigation is over and its legal expositor was narrated in the following manner:

“13. Without dilating on the said aspect of the matter what has to be taken note of now are the provisions of the Code with a situation/stage after completion of the investigation of a case. In this regard the provisions of Section 173(5) may be specifically noted. The said provision makes it incumbent on the investigating agency to forward/transmit to the court concerned all documents/statement, etc. on which the prosecution proposes to reply in the course of the trial. Section 173(5), however, is subject to the provisions of Section 173(5) which confers a power on the investigating officer to request the court concerned to exclude any part of the statement or documents forwarded under Section 173(5) from the copies to be granted to the accused.

14. The court having jurisdiction to deal with the matter, on receipt of the report and the accompanying documents under Section 173, is next required to decide as to whether cognizance of the offence alleged is to be taken in which event summons for the appearance of the accused before the court is to be issued. On such appearance, under Section 207 Cr.P.C, the court concerned is required to furnish to the accused copies of the following documents:

1. The police report;
2. The first information report recorded under Section 154;
3. The statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section(6) of Section 173.
4. The confessions and statements, if any recorded under Section 164;
5. Any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173.

15. While the first proviso to Section 207 empowers the court to exclude from the copies to be furnished to the accused such portions as may be covered by Section 173(6), the second proviso to Section 207 empowers the court to provide to the accused an inspection of the documents instead of copies thereof, if, in the opinion of the court it is not practicable to furnish to the accused the copies of the documents because of the voluminous content thereof. We would like to emphasise, at this stage, that while referring to the aforesaid provisions of the Code, we have deliberately used the expression "court" instead of the expression "Magistrate" as under various special

enactments the requirement of commitment of a case to a higher court (Court of Session) by the Magistrate as mandated by the Code has been dispensed with and the Special Courts constituted under a special statute have been empowered to receive the report of the investigation along with the relevant documents directly from the investigating agency and thereafter to take cognizance of the offence, if so required.”

8. The Court also noticed that seizure of large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the Court under Section 173 Cr.P.C, a fair amount of application of mind on the part of the investigating agency is inbuilt in the process. These documents would fall in two categories: one, which supports the prosecution case and other which supports the accused. At this stage, duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, many times it so happens that the investigating officer ignores the part of seized documents which favour the accused and forwards to the Court only those documents which supports the prosecution. If such a

situation is pointed out by the accused and those documents which were supporting the accused and have not been forwarded and are not on the record of the Court, whether the prosecution would have to supply those documents when the accused person demands them? The Court did not answer this question specifically stating that the said question did not arise in the said case. In that case, the documents were forwarded to the Court under Section 173(5) Cr.P.C. but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect:

“21.The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 Cr.P.C. and would travel beyond the confines of the strict language of

the provisions of Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.

23.1. xx"

9. Keeping in mind the principle of law and ratio laid down in the aforesaid case, we now proceed to deal with the case at hand. As noted above, the petitioner wants a copy of the complaint which was received by the Anti-Corruption Bureau. What is to be borne in mind is that this was a complaint given by some person

to the Anti-Corruption Bureau which only triggered the investigation. Thus, this complaint simply provided an information to the Anti-Corruption Bureau and is not the foundation of the case or even the FIR. In fact, Anti-Corruption Bureau, thereafter, held its own independent investigation into the matter and collected the material which was forwarded to the Home Department and on that basis challan was filed in the Court pointing out that sufficient material emerged on the record as a result of the said investigation to proceed against the petitioner for offences under the provisions of Prevention of Corruption Act read with Section 109 of the IPC. In the final report under Section 173(5) Cr.P.C., this complaint was never forwarded. Thus, it is not a part of police report and is not in custody of the trial court, unlike the situation in **V.K.Sasikala case** (supra). No reliance is placed on the documents by the prosecution either. It is not even a document which would support the case of the petitioner in any manner. Hence the judgment of **V.K.Sasikala** (supra) would have no application to the instant case.

10. We state at the cost of repetition that the prosecution has categorically taken the stand that they do not propose to rely upon the information passed on to the Anti Corruption Bureau leading to an open inquiry against the accused persons. We fail to see how the accused persons are prejudiced by non-disclosure of the name of the person who sent the complaint as well as the original copy of the complaint received by the Anti Corruption Bureau. Situations are many where certain persons do not want to disclose the identity as well as the information/complaint passed on them to the Anti Corruption Bureau. If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their life. This complaint only triggered an enquiry. Ultimately, the first information was lodged on the basis of an open inquiry bearing VER No.31/1987 and it is based on that inquiry the first information report dated 13.10.1992 was registered. After completion of the investigation and after getting the sanction to prosecute accused No.1, charge-sheet was filed. PW1 also did not depose anything about the receipt of complaint/application in his examination-in-chief but receipt of

the complaint/application and its contents having been relied upon by the defence during cross-examination of PW1.

11. We also emphasize that in the instant case the prosecution has relied upon the material which was collected during the investigation. It is not a case where some materials/documents were collected by the investigating agency during the investigations which are in favour of the prosecution and the prosecution is suppressing those documents. We are of the opinion that non-supply of the complaint or contents thereof do not, at all, violate the principle of fair trial. The said complaint has no relevancy in the context of this prosecution and in no manner, it would prejudice the petitioner.

12. Above being the factual and legal position, we find no reason to interfere with the order of the Bombay High Court and dismiss this special leave petition.

.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi
August 21, 2013

SUPREME COURT OF INDIA



JUDGMENT